

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL BRECHT,

Plaintiff, No. CIV S-05-0859 KJM

vs.

BNSF RAILWAY COMPANY,

Defendant. ORDER

Calendared for hearing on September 27, 2006 is plaintiff's motion to dismiss defendant BNSF Railway Company. The third party defendant in this action has failed to file opposition to the motion.

Local Rule 78-230(c) provides that opposition to the granting of a motion must be filed fourteen days preceding the noticed hearing date. The Rule further provides that “[n]o party will be entitled to be heard in opposition to a motion at oral arguments if written opposition to the motion has not been timely filed by that party.” In addition, Local Rule 78-230(j) provides that failure to appear may be deemed withdrawal of opposition to the motion or may result in sanctions. Finally, Local Rule 11-110 provides that failure to comply with the Local Rules “may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”

1 Good cause appearing, IT IS HEREBY ORDERED that:

2 1. The hearing date of September 27 is vacated. Hearing on plaintiff's motion is
3 continued to October 11, 2006 at 10:00 a.m. in courtroom no. 26.

4 2. Third party defendant Harsco Corporation shall file opposition, if any, to the
5 motion no later than September 27, 2006. Failure to file opposition and appear at the hearing
6 will be deemed as a statement of non-opposition and shall result in plaintiff's motion being
7 granted.

8 DATED: September 18, 2006.

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11 UNITED STATES MAGISTRATE JUDGE
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